

EXHIBIT 3

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL)	MDL No. 2804
PRESCRIPTION OPIATE)	
LITIGATION)	Case No.
)	1:17-MD-2804
)	
THIS DOCUMENT RELATES TO)	Hon. Dan A.
ALL CASES)	Polster
)	

— — —
Monday, May 13, 2019
— — —

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CONFIDENTIALITY REVIEW
— — —

Videotaped Deposition of JAMES E.
RAFALSKI, held at Weitz & Luxenburg PC, 3011
West Grand Avenue, Suite 2150, Detroit,
Michigan, commencing at 9:20 a.m., on the
above date, before Michael E. Miller, Fellow
of the Academy of Professional Reporters,
Registered Diplomate Reporter, Certified
Realtime Reporter and Notary Public.

— — —
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<p style="text-align: right;">Page 162</p> <p>1 A. I guess that's Mr. Prevoznik's 2 issue to comment on. 3 I'm not sure, under my 4 authorization from the DEA, if I even knew I 5 could comment on that. 6 Q. In your report -- and you can 7 turn to the pages if you want. Starting on 8 page 40, you make reference to five different 9 methodologies that address the issue of the 10 number of suspicious orders that were and 11 weren't reported in the Track 1 12 jurisdictions, correct? 13 A. I think I report dosage amounts 14 based on the methodologies. 15 Q. I'm sorry. I'm sorry. I 16 apologize. Dosage amounts. 17 So we're talking about the 18 number of -- however you want to describe it, 19 the number of pills or the number of dosage 20 amounts of pills that are going into these 21 jurisdictions over a period of time; is that 22 right? 23 A. Yes, based on that particular 24 methodology. 25 Q. Okay. Well, you say that</p>	<p style="text-align: right;">Page 164</p> <p>1 So you -- you came up with 2 these five methodologies? 3 A. Yes, sir. 4 Q. Okay. And tell me -- tell me 5 why you chose these five methodologies. I 6 think you started to do it, but just go ahead 7 and explain it to me. 8 A. Well, because these are 9 methodologies that were used by one or more 10 companies in my report, during the time frame 11 of my report. Each one of these were not 12 invented by me, but they were actually used. 13 Q. Okay. Can you -- let's start 14 with the first one. Methodology A is maximum 15 monthly trailing six-month threshold. 16 Can you explain to me what you 17 were trying to express here? 18 A. Well, this is the Masters case 19 methodology. 20 Q. Okay. 21 A. Or I shouldn't say methodology. 22 This is their suspicious order system. So 23 it's a rolling six-month, and it looks for a 24 current month that exceeds the highest 25 previous amount in the six months.</p>
<p style="text-align: right;">Page 163</p> <p>1 particular methodology. You used -- you 2 referenced five methodologies, correct? 3 A. Yes, sir. 4 Q. Okay. Did you figure out those 5 methodologies yourself, or did Mr. McCann do 6 that? 7 A. No, those are mine based on -- 8 Q. These five methodologies are 9 yours? 10 A. Yes. Well, they are 11 methodologies that are mirroring suspicious 12 order systems that are utilized by one or 13 more companies in my report. 14 Q. Okay. So did you -- you put 15 these -- did you put these charts together 16 yourself? 17 A. No, I did not. 18 Q. Who put the charts together? 19 A. I -- I'm sorry. 20 Well, this is based on 21 McCann's -- Mr. McCann takes -- took my 22 methodology, and these were the results of 23 his application of my methodology to the 24 ARCOS data. 25 Q. I see.</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. Okay. And so when you refer to 2 flagged orders, you've got -- you know, your 3 top column, it's a grid. 4 A. Yep. 5 Q. And from left to right, across 6 the top, first it's the name of the 7 distributor. Then it says: Flagged orders 8 of oxycodone (dosage units). Then it says: 9 Flagged orders of hydrocodone (dosage units). 10 Let's just take 11 AmerisourceBergen, since this is the first 12 one. 13 A. Okay. 14 Q. Okay. Go down to orders of 15 oxycodone (dosage units), and then it says 16 the number, which is 50,578,040. 17 What's that a number of, dosage 18 units? 19 A. Yes. 20 Q. Okay. And then what does the 21 86% of total dosage units mean? What is 22 that -- 86.5% of what? 23 A. Of the amount that was 24 distributed during the time period stated 25 above into the CT1 jurisdiction.</p>

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<p style="text-align: right;">Page 170</p> <p>1 A. I think that's kind of a 2 hypothetical question. 3 Q. No, it's not hypothetical. You 4 told me that -- you told me that you obtained 5 records from plaintiffs' counsel, correct? 6 A. And it's my belief that I had 7 access to all the records. Now, there's no 8 way that I would know if that occurred or 9 not. That's -- I'm hopeful, as their expert 10 opinion, that I had access to all of the 11 records. 12 I can't affirmatively say that 13 they gave me every record. I -- that's why 14 it's kind of a hypothetical. 15 Q. Well, right now it is a 16 hypothetical because we really have no idea 17 what records you were provided, what records 18 you were provided and what you weren't 19 because I think you told us that you didn't 20 write down all the records that were provided 21 to you. 22 A. Well, I would say that in 23 regards to this matter, I reviewed sufficient 24 due diligence records to draw -- to make my 25 opinion.</p>	<p style="text-align: right;">Page 172</p> <p>1 record in the recordkeeping section of the 2 CFR. 3 BY MR. NICHOLAS: 4 Q. Yeah. 5 A. But it was of my opinion that 6 it's covered under the maintenance of 7 effective controls, and it would be my 8 opinion as -- with my experience and my 9 training and my knowledge, is that it should 10 be kept forever. It's a historical record, 11 and it should be kept by the registrant much 12 greater than two years. 13 Q. Now, you keep saying that the 14 requirement to maintain records is contained 15 in the section pertaining to maintenance of 16 effective controls, but just so the record is 17 clear, there's nothing in the section on the 18 maintenance of effective controls that makes 19 any reference to records, correct? 20 A. Well, I -- 21 MR. FULLER: Form. 22 A. I think within the statements, 23 that's what that statement means. 24 BY MR. NICHOLAS: 25 Q. Means. But I'm asking whether</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. Now, sticking with that for a 2 minute, just because you did not review due 3 diligence records from 2010, 2011, 2012 -- 4 let's assume you didn't see due diligence 5 records or as many as you would have liked. 6 That doesn't mean that the due diligence 7 wasn't done, does it? 8 A. Well, as far as the DEA is 9 concerned, if there's no documentation or 10 record of it, a due diligence file, my 11 opinion would be based on that that doesn't 12 exist. 13 Q. Well, we've already discussed 14 the fact that there was no requirement in the 15 regulations as to the retention of due 16 diligence records -- 17 MR. FULLER: Object to form. 18 BY MR. NICHOLAS: 19 Q. -- for any period of time, 20 right? 21 MR. FULLER: Object to form. 22 That's not the witness's testimony. 23 A. So I don't think that's exactly 24 what my statement was. I think my statement 25 was is that it wasn't contained as a required</p>	<p style="text-align: right;">Page 173</p> <p>1 there's any actual written reference to 2 records or the retention of records in that 3 section? 4 A. Well, so in the maintenance of 5 effective controls? 6 Q. Yeah. 7 A. It doesn't specifically say 8 that, if that's what you're... 9 Q. Okay. Okay. Now -- so just -- 10 we'll break for lunch, but just so I 11 understand, the methodologies that -- the 12 five methodologies described here were 13 selected -- were identified or selected by 14 you. Is that -- based on what you saw the 15 various companies had done over the years; is 16 that correct? 17 A. Yes, sir. 18 Q. And you provided just those 19 methodologies, the concepts, to Mr. McCann 20 and he plugged in the numbers; is that 21 correct? 22 A. Yes, but just as a 23 clarification, I personally didn't discuss 24 that with Mr. McCann. I discussed it with 25 counsel and then counsel relayed that to</p>

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<p>1 Mr. McCann. And then it didn't come -- I</p> <p>2 didn't have -- I've never had a personal</p> <p>3 discussion with Mr. McCann about this. It</p> <p>4 was relayed through attorneys and back.</p> <p>5 Q. Okay. Now, there are five</p> <p>6 methodologies here. Which one are you</p> <p>7 endorsing?</p> <p>8 A. None.</p> <p>9 Q. You don't endorse any of them?</p> <p>10 A. No, sir.</p> <p>11 Q. Okay.</p> <p>12 A. I used these methodologies</p> <p>13 because they were used by the industry. So I</p> <p>14 didn't want to impose a methodology that</p> <p>15 wasn't, you know, recognized or utilized by</p> <p>16 one or multiple distributors.</p> <p>17 MR. NICHOLAS: Okay. Okay.</p> <p>18 Let's take a break.</p> <p>19 THE VIDEOGRAPHER: Going off</p> <p>20 the record at 12:46 p.m.</p> <p>21 (Recess taken, 12:46 p.m. to</p> <p>22 1:30 p.m.)</p> <p>23 THE VIDEOGRAPHER: We're back</p> <p>24 on the record at 1:30 p.m.</p> <p>25 MR. FULLER: Counsel, I think</p>	<p>1 So you don't -- so --</p> <p>2 A. I didn't want to say that I</p> <p>3 didn't endorse my own methodology.</p> <p>4 Q. Okay. So of these five, which</p> <p>5 methodology, if any, do you favor or endorse</p> <p>6 for purposes of the analysis you're doing?</p> <p>7 A. That would be the Masters.</p> <p>8 Q. Okay.</p> <p>9 MR. FULLER: Which is the first</p> <p>10 one, right?</p> <p>11 THE WITNESS: And that's --</p> <p>12 yes, that's methodology one.</p> <p>13 A. And essentially because it has</p> <p>14 been reviewed and an order issued -- or an</p> <p>15 opinion issued by the D.C. court.</p> <p>16 BY MR. NICHOLAS:</p> <p>17 Q. Now, just work with me here,</p> <p>18 because I want to make sure I'm understanding</p> <p>19 what you're saying and also what you're not</p> <p>20 saying, okay?</p> <p>21 Let's just look at the column</p> <p>22 for -- I'm on page 41.</p> <p>23 A. Okay.</p> <p>24 Q. The column for, I don't know,</p> <p>25 flagged orders of oxycodone dosage units, and</p>
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<p>1 Mr. Rafalski had something he wanted</p> <p>2 to clarify related to his last -- or</p> <p>3 your last question.</p> <p>4 THE WITNESS: I don't know if</p> <p>5 it was the last or one of the last. I</p> <p>6 apologize, I think I was more focused</p> <p>7 on going to the bathroom than the</p> <p>8 question.</p> <p>9 But you asked if I endorsed a</p> <p>10 methodology.</p> <p>11 MR. NICHOLAS: Uh-huh.</p> <p>12 THE WITNESS: I guess I</p> <p>13 understood -- or I believed that</p> <p>14 question was asking if I endorsed a</p> <p>15 methodology as a suspicious order</p> <p>16 system or whether I endorsed it as one</p> <p>17 of my methodologies.</p> <p>18 So I'm -- I answered it because</p> <p>19 I thought you thought I would endorse</p> <p>20 it as a suspicious order system, so</p> <p>21 I'm not sure how you asked that</p> <p>22 question. So I --</p> <p>23 BY MR. NICHOLAS:</p> <p>24 Q. Okay. No, I appreciate that.</p> <p>25 I'm glad you did the clarification.</p>	<p>1 you go right down each company, all right.</p> <p>2 You've got one, two, three, four, five</p> <p>3 companies, and in the case of each one,</p> <p>4 you've got a parenthetical that says that</p> <p>5 somewhere between -- that identifies</p> <p>6 somewhere between 86.5% and 95.3% of total</p> <p>7 dosage units, okay?</p> <p>8 A. Yes, sir.</p> <p>9 Q. All right. And that means</p> <p>10 what? Is that the number of dosage units</p> <p>11 that in your opinion should not have been</p> <p>12 shipped?</p> <p>13 A. Well, in my report, if we -- I</p> <p>14 actually make a statement in regards to that</p> <p>15 on page 46.</p> <p>16 Q. Okay.</p> <p>17 A. So it starts after the</p> <p>18 footnote 151: However, it is my opinion to a</p> <p>19 reasonable degree of professional certainty</p> <p>20 that applying the tests set forth in the</p> <p>21 Masters Inc. and Drug Enforcement</p> <p>22 Administration provides a reasonable estimate</p> <p>23 and initial trigger on a first step to</p> <p>24 identifying orders of unusual size.</p> <p>25 Q. So are you saying that --</p>

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<p>1 that I don't know that it's going to be 2 diverted. I probably can't draw a definitive 3 statement that it is, but I'm going to say 4 that it's more probable because the system 5 identified it. 6 Q. So you got it at 51% above, 7 it's going to be diverted; is that what 8 you're telling me? 9 A. Well, that's the definition of 10 probable. If it's an effective suspicious 11 order system, I believe the percents would 12 rise much higher than that, but I guess that 13 depends on the effectiveness of the 14 suspicious order system. 15 Q. Where are you getting that 16 percent from? Where are you getting that 17 from, just your own -- 18 A. What? 19 Q. The 51, the probable, where are 20 you getting that it's probable? 21 A. That's my belief of what 22 probable means. 23 Q. Okay. Other than your belief, 24 is it written down anywhere? Is there any 25 research on that? Is there any data on that?</p>	<p>1 record. Also provided to me, there's the 2 ARCOS data, which is not an original record, 3 and there were some electronic databases that 4 appeared to me to be an electronic 5 spreadsheet or an electronic format of orders 6 that distributors or registrants had 7 submitted as part of the discovery. But none 8 of those would be what I would consider an 9 original record. 10 Q. Can you identify a particular 11 order from a particular pharmacy that you 12 believe should have been reported as 13 suspicious? 14 A. Well, in my assignment to 15 create this and do the investigation to come 16 to this opinion, there wasn't a requirement 17 for me to actually find specific orders that 18 were suspicious. 19 First of all, it would require 20 the use of the suspicious order system of the 21 registrant, like what would be the criteria. 22 The -- and the thing I found in doing my 23 opinion is that probably the most critical 24 part of setting up a suspicious order system 25 is the due diligence or sometimes in the</p>
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<p>1 Is this just -- just your belief? 2 A. Not that I can cite. 3 Q. Okay. 4 MR. FULLER: Vegas odds. 5 MR. NICHOLAS: Okay. 6 BY MR. NICHOLAS: 7 Q. Did you look at any individual 8 orders from any pharmacies in the Cuyahoga or 9 Summit Counties? 10 A. I looked at some DEA 222 forms, 11 but I believe my recollection, it was out of 12 maybe the Boston area, so I would say no. 13 Q. Okay. 14 A. No original records. I 15 reviewed no original records. 16 Q. You reviewed data that was in 17 the aggregate, right, totals? Correct? 18 A. No. I reviewed -- so just so 19 we're clear on, you know, what we're talking 20 about, so there's no confusion. 21 Q. Uh-huh. 22 A. So to me, in the DEA world, an 23 original record is the actual DEA order form, 24 the invoice or a CSOS electronic order form. 25 So that's what I would consider an original</p>	<p>1 industry they call it the onboarding, and 2 that's to establish what the criteria is. I 3 said earlier what the usual is. 4 And I found it difficult 5 because I didn't really find an adequate 6 effort to set up what actually would be a 7 usual or what would be an expected order. So 8 for me to go in and try to make that kind of 9 analysis wouldn't be possible. 10 Q. So sitting here today, you 11 can't identify a particular order from a 12 particular pharmacy that should have been 13 reported as suspicious that wasn't; is that 14 correct? 15 MR. FULLER: Form. 16 A. I don't know because I didn't 17 task myself to do that. 18 BY MR. NICHOLAS: 19 Q. Sitting here today, can you do 20 it? I know you didn't -- I know it wasn't 21 part of your job description here. That's 22 all I want to know is can you do it today? 23 Is it part of your report? 24 A. Well, actually, let me retract. 25 I think I did that and I think it's on</p>

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<p>1 see in McKesson's suspicious order monitoring 2 program? 3 A. At the very end of the time 4 period, they contracted or -- a company 5 called AGI, and AGI did a -- was designing a 6 model for them, and I thought just by looking 7 what limited information I got, that I 8 thought there was some potential for that. 9 I'm not saying that I'm 10 approving it, and without actually doing a 11 lot more analysis, but I thought that that 12 was -- had the potential for a good system. 13 Q. As you sit here today, do you 14 have any opinions on whether McKesson's AGI 15 suspicious order monitoring program complies 16 with the CSA and its regulations? 17 A. No, I did not evaluate it 18 because it was at the end of the time frame. 19 Q. Do you have any plans to make 20 that evaluation before trial? 21 A. If required or requested. 22 Q. Has anyone requested that you 23 do so today? 24 A. No, sir. 25 Q. So currently, as you sit here</p>	<p>1 third paragraph from the top of the page, you 2 say: The ARCOS data, defendant transactional 3 data, and the SLCG reports generated 4 therefrom are consistent with the types of 5 data, facts, information, and reports I would 6 typical rely on in conducting the analysis 7 and reaching the opinions contained therein. 8 Do you see that? 9 A. I do, sir. 10 Q. Now, is it your opinion that 11 Dr. McCann's five threshold-based 12 methodologies can be used to identify 13 suspicious orders under Section 1301.74? 14 MR. FULLER: Form, compound. 15 A. You're asking this question 16 about Dr. McCann in regards to this 17 paragraph? 18 BY MR. EPPICH: 19 Q. I can rephrase it. 20 Is it your opinion that the 21 five threshold-based methodologies used by 22 Dr. McCann and cited by yourself, that those 23 methodologies can be used to identify 24 suspicious orders under Section 1301.74? 25 A. No, I think my opinion is clear</p>
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<p>1 today, you have no opinion about whether or 2 not McKesson's AGI suspicious order 3 monitoring program complies with or does not 4 comply with the CSA, correct? 5 A. I did not offer opinion on that 6 matter, sir. 7 Q. You testified earlier about 8 ARCOS. Are you familiar with the reports 9 generated from the ARCOS database? 10 A. What type of reports are you 11 speaking of, sir? Could you clarify? 12 Q. The reports that a diversion 13 investigator can request from the ARCOS 14 database? 15 A. Oh, so generated pursuant to a 16 request? Yes, sir. 17 Q. Okay. And you saw those kind 18 of reports while you were a DEA diversion 19 investigator, correct? 20 A. I requested those type of 21 reports as a diversion investigator. 22 Q. On page 15 of your report -- 23 A. 15? 24 Q. 15. 25 You discuss ARCOS, and in the</p>	<p>1 that they aren't suitable suspicious order 2 systems. 3 Q. Is it your opinion that 4 Dr. McCann's -- and I quote -- "flagged 5 orders" are suspicious orders under 6 Section 1301.74(b)? 7 A. Are you jumping back to the 8 methodologies? 9 Q. I'm just asking you a question, 10 sir. 11 MR. FULLER: You can clarify 12 the question if you don't understand. 13 BY MR. EPPICH: 14 Q. But, yes, under the 15 methodologies. Under the methodologies, yes, 16 sir. 17 A. No, those aren't suspicious 18 orders under the methodologies. Those are 19 dosage units. 20 Q. While you were at the DEA, and 21 the DEA was analyzing ARCOS data, did DEA use 22 any of Dr. McCann's five methodologies to 23 identify suspicious orders? 24 A. When I was at the DEA? 25 Q. Yes, sir.</p>

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<p style="text-align: right;">Page 402</p> <p>1 Henry Schein's investigation?</p> <p>2 A. Let me see if I state that in</p> <p>3 my report. I don't have independent</p> <p>4 recollection of that.</p> <p>5 Q. So you don't know one way or</p> <p>6 the other?</p> <p>7 A. No, I'm not saying that.</p> <p>8 Q. Okay.</p> <p>9 A. I'm just saying I don't have a</p> <p>10 direct recollection when you state it that</p> <p>11 way.</p> <p>12 Q. How is that different than what</p> <p>13 I asked? Let me back up then.</p> <p>14 Sitting here today, do you know</p> <p>15 one way or the other whether or not Henry</p> <p>16 Schein provided monthly suspicious order</p> <p>17 reports along with the pended order reports?</p> <p>18 A. The statement I make in my</p> <p>19 report is for the time period of 2009 to</p> <p>20 2018, that there were no suspicious orders</p> <p>21 reported in the CT1 jurisdiction.</p> <p>22 Q. Well, I know -- I --</p> <p>23 A. I --</p> <p>24 Q. Mr. Rafalski, I get that.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 404</p> <p>1 A. I would have no reason not to</p> <p>2 believe your statement that that's what he</p> <p>3 said.</p> <p>4 Q. Do you know if DEA has ever</p> <p>5 expressed any criticisms about Henry Schein's</p> <p>6 suspicious order monitoring system?</p> <p>7 A. I'm not aware of any</p> <p>8 communication from the DEA to Henry Schein in</p> <p>9 regards to that topic.</p> <p>10 Q. Mr. Rafalski, can reasonable</p> <p>11 minds disagree as to whether or not an order</p> <p>12 is suspicious?</p> <p>13 A. I think there's always the</p> <p>14 potential for a disagreement of -- if you're</p> <p>15 talking about designing a system and what's</p> <p>16 suspicious. I think it's the subsequent due</p> <p>17 diligence that confirms or not the accuracy</p> <p>18 of whether or not an order is suspicious.</p> <p>19 So just the nature of an</p> <p>20 agreement or disagreement on what defines a</p> <p>21 suspicious order, you mean the definition of</p> <p>22 it or what it is, I guess?</p> <p>23 Q. Can reasonable minds disagree</p> <p>24 as to whether or not a particular order is</p> <p>25 suspicious?</p>
<p style="text-align: right;">Page 403</p> <p>1 Q. I mean, but that's specific to</p> <p>2 Summit County, isn't it?</p> <p>3 A. Yes, sir.</p> <p>4 Q. That doesn't pertain to Henry</p> <p>5 Schein and how they do business elsewhere,</p> <p>6 does it?</p> <p>7 A. It does not.</p> <p>8 Q. And you're familiar with Craig</p> <p>9 McCann's characterization of Henry Schein's</p> <p>10 business in Summit County, are you not?</p> <p>11 A. No, I'm not sure what statement</p> <p>12 you're making there.</p> <p>13 Q. Okay. Are you familiar with --</p> <p>14 do you know that he gave a deposition last</p> <p>15 week?</p> <p>16 A. I -- he did give a deposition.</p> <p>17 Q. And you probably haven't had a</p> <p>18 chance to review the testimony yet, have you?</p> <p>19 A. I have not.</p> <p>20 Q. Have you had a chance to talk</p> <p>21 to him about it?</p> <p>22 A. No, sir.</p> <p>23 Q. Would it surprise you to know</p> <p>24 that he characterized Henry Schein's dealings</p> <p>25 with Summit County as de minimis?</p>	<p style="text-align: right;">Page 405</p> <p>1 A. I think, yes, I would answer</p> <p>2 yes to that question.</p> <p>3 MR. JONES: All right. No</p> <p>4 further questions. I'll pass the</p> <p>5 witness. Thank you.</p> <p>6 THE VIDEOGRAPHER: Going off</p> <p>7 the record at 6:16 p.m.</p> <p>8 (Proceedings recessed at</p> <p>9 6:16 p.m.)</p> <p>10 --o0o--</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">Page 480</p> <p>1 distributor, when you were working as a</p> <p>2 diversion investigator -- strike the</p> <p>3 question. Hold on a second.</p> <p>4 A. Can I speak to my counsel about</p> <p>5 the --</p> <p>6 Q. No, that's okay. We can move</p> <p>7 on.</p> <p>8 A. -- Touhy authorization --</p> <p>9 Q. We can move on.</p> <p>10 A. -- that I have a question, with</p> <p>11 him?</p> <p>12 Q. I don't have a lot of time, so</p> <p>13 I'll just withdraw the last partial question</p> <p>14 that I was just trying to ask --</p> <p>15 A. Okay.</p> <p>16 Q. -- and we'll move on.</p> <p>17 Yesterday I believe you</p> <p>18 testified that none of the five flagging</p> <p>19 methods identified in your report are</p> <p>20 suitable for suspicious order monitoring</p> <p>21 systems.</p> <p>22 Do you remember using the word</p> <p>23 "suitable"?</p> <p>24 A. I do. And I thought about that</p> <p>25 testimony after I left yesterday, and I'd</p>	<p style="text-align: right;">Page 482</p> <p>1 A. Just the trigger of the</p> <p>2 six-month threshold, maximum monthly, just</p> <p>3 the trigger that would identify the</p> <p>4 suspicious order, that was, I believe, the</p> <p>5 question I answered. That methodology, not</p> <p>6 the subsequent failure to do due diligence</p> <p>7 and the identification of orders that</p> <p>8 resulted from that.</p> <p>9 Q. My question was whether it's</p> <p>10 your testimony that the Masters method, the</p> <p>11 one that identified 95% of Walgreens orders</p> <p>12 as suspicious, is the only one of your five</p> <p>13 flagging methods that you believe is suitable</p> <p>14 for identifying suspicious orders, yes or no,</p> <p>15 please?</p> <p>16 MR. FULLER: Object to form,</p> <p>17 vague.</p> <p>18 A. As a trigger mechanism or</p> <p>19 threshold to establish that, an order as</p> <p>20 being potentially suspicious, I would answer</p> <p>21 yes to that question.</p> <p>22 BY MS. SWIFT:</p> <p>23 Q. You've referred a couple of</p> <p>24 times to this trigger mechanism, and I take</p> <p>25 from your testimony that you're referring to</p>
<p style="text-align: right;">Page 481</p> <p>1 like to maybe correct it or make a statement</p> <p>2 in regards to it.</p> <p>3 Q. Well, let me just ask you.</p> <p>4 What did you mean when you said none of the</p> <p>5 five flagging methods that you identify in</p> <p>6 your report are suitable for suspicious order</p> <p>7 monitoring systems?</p> <p>8 A. Well, specifically how they</p> <p>9 would identify a suspicious order, two times,</p> <p>10 three times, the 8,000 and the pickers and</p> <p>11 packers program or the -- I think I don't use</p> <p>12 that particular name -- the one -- the one</p> <p>13 that I think that statement would indicate</p> <p>14 that I would say that the Masters was not</p> <p>15 suitable, and I -- I would disagree.</p> <p>16 If I made that statement and</p> <p>17 said that one was, I'd like to correct that</p> <p>18 and say that I -- this would be a suitable --</p> <p>19 potentially suitable suspicious order</p> <p>20 program.</p> <p>21 Q. The Masters method that</p> <p>22 identified 95% of Walgreens orders as</p> <p>23 suspicious, that one is suitable? Is that</p> <p>24 your testimony, sir? But none of the other</p> <p>25 ones?</p>	<p style="text-align: right;">Page 483</p> <p>1 the aspect of your methodology whereby after</p> <p>2 the first order is flagged as suspicious, it</p> <p>3 triggers every subsequent order to be flagged</p> <p>4 as suspicious; is that correct, sir?</p> <p>5 MR. FULLER: Form, misstates</p> <p>6 his report.</p> <p>7 A. No.</p> <p>8 BY MS. SWIFT:</p> <p>9 Q. What do you mean by a trigger</p> <p>10 mechanism?</p> <p>11 A. A threshold event. Every</p> <p>12 suspicious order system has to identify an</p> <p>13 order, so that would be -- and I'm sorry if</p> <p>14 that terminology is unfamiliar to you. That</p> <p>15 would be a trigger event or a threshold event</p> <p>16 or something that stops the distribution of</p> <p>17 an order and requires the registrant to take</p> <p>18 some action; the unusual size, the unusual</p> <p>19 frequency or deviating from a --</p> <p>20 substantially from a pattern.</p> <p>21 Q. Besides the five flagging</p> <p>22 methods that you identify in your report,</p> <p>23 there may be other methods of identifying</p> <p>24 suspicious orders that registrants use in the</p> <p>25 real world, correct, sir?</p>

19 (Pages 480 to 483)

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<p>1 database flagged under one of the flagging 2 methods, correct? Not whether it's possible, 3 just how often that happened? 4 A. No, I did not. 5 Q. Okay. 6 A. Because as my previous answer, 7 under those methodologies, it wouldn't 8 matter. 9 Q. Let's go to page 46 of your 10 report, please, sir. You say on page 46 that 11 you only presented data to an economist for 12 Flagging Method A, the Masters method, 13 correct? 14 MR. FULLER: Where are you 15 reading from, Counsel? 16 A. I don't think I said that. I 17 think this statement is in relation to the 18 correction of my testimony that this is the 19 one system that I provide an opinion on that 20 has a reasonable degree of certainty that... 21 BY MS. SWIFT: 22 Q. Did you provide any of the data 23 that appears in your report to an economist? 24 MR. FULLER: Object to form. 25 A. I don't recall doing that. I</p>	<p>1 an economist or I've never talked to anyone 2 with the purpose of giving these things to an 3 economist. So I don't want to imply my 4 testimony is I've never talked to an 5 economist. I'm not aware of it, but I'm just 6 kind of protecting the fact that if I did, I 7 wasn't even aware of it. 8 Q. You never explained the data in 9 your report to anyone for the purpose of them 10 taking that data and using it to calculate 11 damages in this litigation? 12 A. I have never done that. 13 Q. You testified yesterday that 14 you provided the five flagging methods 15 discussed in your report -- you provided 16 those to plaintiffs' counsel by phone I 17 believe, you said to -- provided them to 18 Mr. Farrell. 19 Do you remember that testimony? 20 A. I think that question was the 21 first time that I talked to somebody about 22 it. So -- 23 Q. I'm trying to get at how the -- 24 MR. FULLER: Object to the form 25 of the last question. I'm sorry.</p>
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<p>1 do not believe so, no. 2 BY MS. SWIFT: 3 Q. Do you have any understanding 4 about whether any of the data that appears in 5 your report was going to be passed on by the 6 plaintiffs' lawyers to some economist to make 7 use of that data? 8 A. I believe there's a statement 9 of that in my report somewhere, that it could 10 be used. 11 Q. Do you know whether that ever 12 happened? 13 A. I don't believe it's happened. 14 If it has happened, no one's advised me. 15 Q. Have you ever had a 16 conversation with any economist working for 17 the plaintiffs' lawyers about the data that 18 appears in your report? 19 A. No, ma'am. 20 Q. You testified -- 21 A. Can I just correct that a 22 little bit? 23 So in the course of meetings, 24 I've talked to a lot of people. No one ever 25 I've talked to has identified themselves as</p>	<p>1 BY MS. SWIFT: 2 Q. I'm trying to get at how the 3 five flagging methods made their way from you 4 to Dr. McCann. 5 Do you have any idea how that 6 happened? 7 A. There was a couple of different 8 discussions with the plaintiff attorneys. 9 I'm not sure who relayed it to Dr. McCann. I 10 discussed it with Paul Farrell, Mr. Farrell a 11 couple of times; also with Mr. Fuller. I'm 12 not sure who relayed it to him, but I 13 discussed the methodologies and how I wanted 14 them applied. 15 Q. All of those conversations were 16 verbal, is that correct, not in writing? 17 A. There was nothing in writing, 18 and they were verbal, either in person or on 19 a telephone. 20 Q. I'm going to hand you what I'll 21 mark as Exhibit 20. 22 MS. SWIFT: And, Counsel, I 23 apologize, I only have one extra copy. 24 Blame the hotel. I'm not even going 25 to have a copy for myself.</p>

23 (Pages 496 to 499)

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<p>1 (Whereupon, Deposition Exhibit 2 Rafalski-20, Plaintiffs' Responses to 3 the Amended and Clarified Discovery 4 Ruling 12 Supplemental Interrogatory 5 Issued to Plaintiffs, was marked for 6 identification.) 7 BY MS. SWIFT: 8 Q. Do you have that in front of 9 you, sir? 10 A. I do. 11 THE WITNESS: Trade you. 12 Sorry. 13 BY MS. SWIFT: 14 Q. Well, first of all, have you 15 ever seen the document that I've marked as 16 Exhibit 20? 17 A. I have, yes, ma'am. 18 Q. The document I marked as 19 Exhibit 20 is a set of interrogatory 20 responses served by the plaintiffs on 21 January 25th, 2019, and if you go to -- I 22 believe it's the sixth page -- there's a list 23 of flagging methodologies prepared at the 24 very end of the written interrogatory 25 response. Keep going.</p>	<p>1 Q. Okay. All right. Turning back 2 to your report -- you can set that aside, 3 we're done with it -- page 42, I'd like to 4 take a look at, please. 5 MR. FULLER: I'm sorry, 6 Counsel, what page? 7 MS. SWIFT: 42. 8 BY MS. SWIFT: 9 Q. If you had picked Flagging 10 Method B that's identified at the top of 11 page 42, instead of Method A, the Masters 12 method, what data would you have presented 13 for Walgreens? 14 MR. FULLER: Object to form. 15 A. I don't understand that 16 question. 17 BY MS. SWIFT: 18 Q. Fair enough. 19 A. I think I did pick 20 Methodology B, but so I don't understand. 21 Q. Well, you said you endorsed 22 Method A and that's the only method you 23 endorsed, correct, because of the Masters 24 case and some other reasons? 25 A. Well, I think I make that</p>
Page 501	Page 503
<p>1 MR. FULLER: It's not page 2 numbered. 3 MS. SWIFT: I noticed that, 4 Mike. 5 MR. FULLER: We'll blame 6 Mr. Moody or Mr. Farrell. 7 BY MS. SWIFT: 8 Q. Do you have a list in front of 9 you, Mr. Rafalski, that lists five flagging 10 methodologies in the plaintiffs' 11 interrogatory response from January 25th? 12 A. I do. 13 Q. Are these your five flagging 14 methodologies? 15 A. Yes, ma'am. 16 Q. Which one is based on the 17 Masters case? 18 A. 4. 19 Q. Am I correct based on your 20 testimony today and yesterday that you're not 21 planning to come to trial and offer testimony 22 about any of the flagging methods except the 23 Masters method? 24 A. No, I don't think that's my 25 testimony.</p>	<p>1 statement at the conclusion that we had 2 discussed -- 3 Q. Right. 4 A. -- in regards to the Masters. 5 Q. Right. On page 46 you endorse 6 the Masters method, Method A, correct, sir? 7 A. Well, I don't know that I 8 endorse the system. I say that applying the 9 tests set forth in the Masters provides a 10 reasonable estimate and initial trigger. I 11 say there's a reasonable. I don't know that 12 I would say that it's an endorsement. I say 13 that because in my -- extensively in my 14 training and in publications, DEA doesn't 15 endorse suspicious order systems. 16 Q. You say in your report that you 17 are selecting Methodology A because of your 18 understanding that this litigation will be 19 advanced by selecting a methodology 20 quantifying a volume of pills that entered 21 CT1 jurisdictions, that's Summit and Cuyahoga 22 County, unlawfully and providing this data to 23 an economist to measure the harm caused by 24 this volume. 25 Correct, sir?</p>

24 (Pages 500 to 503)

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<p>1 A. Yes.</p> <p>2 Q. If you had picked Method B</p> <p>3 instead of Method A, the data you would have</p> <p>4 presented would have been very different,</p> <p>5 correct, sir?</p> <p>6 A. I wouldn't have picked that</p> <p>7 method because it wouldn't be a reasonable</p> <p>8 degree -- or it wouldn't have been a</p> <p>9 suspicious order system that I would have</p> <p>10 ever approved or not made comment on.</p> <p>11 My opinion is that a fixed two</p> <p>12 times a 12-month average would not be a</p> <p>13 methodology that I would ever say to move</p> <p>14 forward to be considered by the Court.</p> <p>15 Q. I'm going to ask you with</p> <p>16 respect, sir, to please listen to my</p> <p>17 questions.</p> <p>18 A. Okay.</p> <p>19 Q. You picked --</p> <p>20 A. Can I just --</p> <p>21 Q. Go ahead.</p> <p>22 A. It would be different results.</p> <p>23 I would -- if that's the answer you want,</p> <p>24 then the methodology of the A -- obviously,</p> <p>25 it would be different results.</p>	<p>1 Q. Understood.</p> <p>2 A. Okay. All right.</p> <p>3 Q. You didn't pick Method B. You</p> <p>4 picked Method A, that it flagged 95% of</p> <p>5 Walgreens orders.</p> <p>6 A. I didn't pick it because of the</p> <p>7 percentage --</p> <p>8 Q. Okay.</p> <p>9 A. -- the percentage of how many</p> <p>10 they flagged was not the factor that I used</p> <p>11 to pick that. It was because of the review</p> <p>12 by the D.C. Court and my familiarity with the</p> <p>13 case, and the fact that I would see that that</p> <p>14 could be a viable suspicious order trigger.</p> <p>15 Q. If you had picked Method C,</p> <p>16 which you can see on page 43 of your report,</p> <p>17 you would have identified just 1.5% of</p> <p>18 Walgreens orders for oxycodone in Cuyahoga</p> <p>19 County as suspicious, correct, sir?</p> <p>20 A. I do agree that that's the</p> <p>21 number that it would have identified, but I</p> <p>22 also would like to state it would be expected</p> <p>23 that it would decrease because that's -- as</p> <p>24 my opinion states, is ineffective three</p> <p>25 times --</p>
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<p>1 Q. Method A, the Masters method,</p> <p>2 identified 95% of Walgreens orders for</p> <p>3 oxycodone and hydrocodone as suspicious,</p> <p>4 correct, sir?</p> <p>5 A. Yes, that's what the chart</p> <p>6 says.</p> <p>7 Q. If you had picked Method B,</p> <p>8 that method identified just 49% of Walgreens</p> <p>9 orders for oxycodone into Cuyahoga County as</p> <p>10 suspicious, correct, sir?</p> <p>11 A. That's what the information</p> <p>12 says in the analysis.</p> <p>13 Q. The number is different for</p> <p>14 hydrocodone. If you had picked Method B,</p> <p>15 that method identified 23% -- 23.7% of</p> <p>16 Walgreens hydrocodone orders as suspicious,</p> <p>17 correct, sir?</p> <p>18 A. Yes. But again, I'm going</p> <p>19 to restate. I would not have picked -- I</p> <p>20 mean, I'm not going to disagree that the</p> <p>21 figures are different, but I would not have</p> <p>22 picked that.</p> <p>23 Q. I get it.</p> <p>24 A. But if I would have picked it,</p> <p>25 they would be different.</p>	<p>1 Q. You didn't --</p> <p>2 A. -- trigger.</p> <p>3 Q. You can't vouch for the</p> <p>4 accuracy of any of the numbers that appear in</p> <p>5 these tables at pages 41 to 45 of your</p> <p>6 report, correct, sir?</p> <p>7 A. Mr. McCann would have to</p> <p>8 testify to the accuracy. He did the</p> <p>9 analysis.</p> <p>10 Q. You just relied on what</p> <p>11 Mr. McCann provided, correct, sir?</p> <p>12 A. Yes, I did.</p> <p>13 Q. You were -- strike that.</p> <p>14 You don't have an opinion about</p> <p>15 whether any particular order that you</p> <p>16 identified or that Dr. McCann identified as</p> <p>17 suspicious was diverted to an illicit</p> <p>18 channel, correct, sir?</p> <p>19 A. Well, I think based on the</p> <p>20 methodologies and the lack of due diligence,</p> <p>21 I think my -- these say that those were</p> <p>22 diverted.</p> <p>23 Q. My question was a little bit</p> <p>24 different.</p> <p>25 A. Okay.</p>

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<p>1 Appendix 10, correct?</p> <p>2 A. Yes, I do.</p> <p>3 Q. And you can see the first page</p> <p>4 of what I just handed you is page 226 of</p> <p>5 1260. Is that the page that you were citing</p> <p>6 in footnote 489?</p> <p>7 A. Yes.</p> <p>8 Q. And then if you'll turn to</p> <p>9 page 46 of what I just handed you, can you</p> <p>10 confirm for me that that is page 856 that you</p> <p>11 cited in your report?</p> <p>12 A. Page 46. You mean page -- I'm</p> <p>13 sorry, page 856?</p> <p>14 Q. I'm sorry. To make this</p> <p>15 easier -- this was the theory, anyway -- we</p> <p>16 added page numbers at the bottom right.</p> <p>17 A. Okay.</p> <p>18 Q. So turn to page 46, and it's</p> <p>19 double sided.</p> <p>20 A. Oh, all right. I was confused</p> <p>21 when you said -- I was looking for the...</p> <p>22 okay.</p> <p>23 Q. Is page 46 also page 856 of</p> <p>24 1260?</p> <p>25 A. Yes, ma'am.</p>	<p>1 2018, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And it's a table that shows</p> <p>4 numbers broken out by drug and by</p> <p>5 transaction, dosage units, MME, and base</p> <p>6 weight, correct?</p> <p>7 A. Yes.</p> <p>8 Q. After the table on page 1 of</p> <p>9 Appendix 10, there's a series of bar graphs</p> <p>10 showing, in the aggregate, Walgreens</p> <p>11 shipments of oxy and hydro to its pharmacies</p> <p>12 in the aggregate, correct?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. None of these charts shows any</p> <p>15 data for any individual Walgreens pharmacy,</p> <p>16 correct?</p> <p>17 MR. FULLER: Object to form.</p> <p>18 A. That's an accurate statement,</p> <p>19 but they're all built upon individual orders.</p> <p>20 BY MS. SWIFT:</p> <p>21 Q. I understand.</p> <p>22 A. Okay.</p> <p>23 Q. I'm just saying, when you're</p> <p>24 flipping through Dr. McCann's charts that</p> <p>25 display the results of his flagging</p>
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<p>1 Q. Is that the page 856 that you</p> <p>2 cite in your report at page 114?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. Okay. This Appendix 10 from</p> <p>5 McCann's report is what you relied on to</p> <p>6 determine total volume of oxycodone and</p> <p>7 hydrocodone that Walgreens shipped into</p> <p>8 Cuyahoga and Summit Counties; is that right?</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. You only talk about oxycodone</p> <p>11 and hydrocodone in your report, correct?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. Am I right that you don't have</p> <p>14 any opinions about any other opioid pain</p> <p>15 medications besides oxy and hydro?</p> <p>16 A. As of today I do not because I</p> <p>17 was not requested to do any analysis on those</p> <p>18 other drugs.</p> <p>19 Q. After -- turn back to page 1 of</p> <p>20 Exhibit 21. The page 1 of Exhibit 21 is a</p> <p>21 table that shows overall numbers, Total</p> <p>22 Shipments to Cuyahoga identified by</p> <p>23 Methodology, Common Sense Method, Maximum</p> <p>24 Monthly Trailing Six-Month Pharmacy Specific</p> <p>25 Threshold, Walgreens to All Buyers, 1996 to</p>	<p>1 methodologies, you can't tell anything about</p> <p>2 any individual pharmacy, correct?</p> <p>3 A. I cannot by looking at these</p> <p>4 charts.</p> <p>5 Q. Do you know how many Walgreens</p> <p>6 stores there are in Cuyahoga County?</p> <p>7 A. I do not.</p> <p>8 Q. How about Summit County?</p> <p>9 A. I do not.</p> <p>10 Q. Do you know anything about the</p> <p>11 geographic locations of any of Walgreens'</p> <p>12 pharmacies in Summit or Cuyahoga County,</p> <p>13 other than the fact that they're in those</p> <p>14 counties?</p> <p>15 A. It doesn't appear in my</p> <p>16 opinion, but during my review of data, I did</p> <p>17 at one point take a look by just using the</p> <p>18 Internet, Googling and looking at some of the</p> <p>19 locations, but I didn't formulate a report on</p> <p>20 that.</p> <p>21 So I won't say that I never did</p> <p>22 that, but I don't have any records or</p> <p>23 documents that would record exactly the</p> <p>24 distances and the locations.</p> <p>25 Q. You also didn't include in your</p>

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<p>1 report anything about the specific customer</p> <p>2 base for any individual Walgreens pharmacy,</p> <p>3 correct, sir?</p> <p>4 A. I did not.</p> <p>5 Q. Do you know how many of the</p> <p>6 Walgreens pharmacies in Cuyahoga and Summit</p> <p>7 County are on corner lots?</p> <p>8 A. I do not.</p> <p>9 Q. Do you know how many of the</p> <p>10 Walgreens pharmacy in Summit and Cuyahoga</p> <p>11 Counties are freestanding locations with</p> <p>12 their own dedicated parking and a</p> <p>13 drive-through window?</p> <p>14 A. I do not.</p> <p>15 Q. Do you know how much oxycodone</p> <p>16 or hydrocodone Walgreens distribution centers</p> <p>17 shipped to any one of those Walgreens</p> <p>18 pharmacies?</p> <p>19 A. I do not. I had not done that</p> <p>20 analysis up to today.</p> <p>21 Q. You can't tell any of that from</p> <p>22 the charts that are in Appendix 10, correct,</p> <p>23 sir?</p> <p>24 A. That's correct.</p> <p>25 Q. All right. You can set that</p>	<p>1 Walgreens depositions where Walgreens</p> <p>2 witnesses talked about the kind of due</p> <p>3 diligence that had been done?</p> <p>4 A. I read depositions or specific</p> <p>5 parts of depositions relating to my report.</p> <p>6 I -- you know, my training and experience has</p> <p>7 said that if it's not written down, it</p> <p>8 doesn't exist. It needs to be documented.</p> <p>9 So how I would look at that</p> <p>10 kind of due diligence, if it was not a</p> <p>11 recorded due diligence and there wasn't a</p> <p>12 historical record, and it's not available for</p> <p>13 future review for other incidences, I</p> <p>14 wouldn't consider -- I mean, I'm not going to</p> <p>15 deny that it would have occurred or would not</p> <p>16 have occurred, but it's really not due</p> <p>17 diligence if it's not recorded in a due</p> <p>18 diligence file.</p> <p>19 Q. Well, there's a couple of</p> <p>20 things going on in that answer.</p> <p>21 A. Sure.</p> <p>22 Q. I take from your testimony that</p> <p>23 you are assuming, if Walgreens no longer</p> <p>24 retains a document today, that that means</p> <p>25 that document never existed, correct?</p>
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<p>1 one aside.</p> <p>2 Turn, if you would, please,</p> <p>3 sir, to page 117 of your report. This is a</p> <p>4 section within the Walgreens section about</p> <p>5 the due diligence that you believe Walgreens</p> <p>6 conducted, correct?</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. Now, as I understand it, it's</p> <p>9 your opinion that because you only saw a</p> <p>10 limited number of e-mails about due diligence</p> <p>11 that Walgreens performed 10, 12, 13 years</p> <p>12 ago, that that means Walgreens performed no</p> <p>13 other due diligence; is that correct?</p> <p>14 A. Not that was brought to my</p> <p>15 attention in trying to formulate my opinion.</p> <p>16 Q. And in formulating your</p> <p>17 opinion, you determined that Walgreens had</p> <p>18 only conducted limited due diligence because</p> <p>19 you only saw documentation of limited due</p> <p>20 diligence, correct?</p> <p>21 A. That's the only basis I could</p> <p>22 use to form my opinion.</p> <p>23 Q. You based your -- well, let me</p> <p>24 ask you this.</p> <p>25 Did you read any of the</p>	<p>1 A. In my experience as a diversion</p> <p>2 investigator, in conducting an investigation</p> <p>3 or forming an opinion, yes, it doesn't exist.</p> <p>4 Q. Are you basing your opinion</p> <p>5 that Walgreens did limited due diligence on</p> <p>6 the documents cited in your report at</p> <p>7 footnotes 499 and 500?</p> <p>8 MR. FULLER: Object to form.</p> <p>9 A. I believe I also cite 501, but</p> <p>10 yes, ma'am.</p> <p>11 BY MS. SWIFT:</p> <p>12 Q. Is that it, though, in terms of</p> <p>13 the support you have for your opinion that</p> <p>14 Walgreens performed limited due diligence is</p> <p>15 based on the documents cited in notes 499,</p> <p>16 500 and 501?</p> <p>17 A. Yeah, and the fact that they</p> <p>18 didn't produce any prior to 2011, yes, ma'am.</p> <p>19 Q. I'll hand you one of those</p> <p>20 documents that we'll mark as Exhibit 22.</p> <p>21 (Whereupon, Deposition Exhibit</p> <p>22 Rafalski-22, E-mail(s),</p> <p>23 WAGFLDEA00000459 - WAGFLDEA00000460,</p> <p>24 was marked for identification.)</p> <p>25 ///</p>

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